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Date of Decision: 20-12-95

Special Civil Application No.8499 of 1994

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Mr. N.R.Shahani, learned counsel for the petitioner.

Mr.J.D.Ajmera, learned Addl. Central Government Standing Counsel, for the respondent No.1.

Mr.Vithalbhai B.Patel, learned senior counsel with Mr.D.G.Chauhan, learned counsel for the respondent No.2.

Coram: (M.R. Calla, J.)

Date: 20-12-95

ORAL JUDGMENT:

1. The petitioner being President of Gujarat Mazdoor Panchayat has preferred this petition against the Regional Provident Fund Commissioner, Ahmedabad and Anil Starch Products Ltd. with the prayers as under:

- (a) the respondent No.1 to cancel the special status of 'Exempted Establishment' granted to respondent No.2 under the P.F.Act.
- (b) The respondent No.1 to prosecute the respondent No.2 and all the Directors of respondent No.2 company for the breach of the P.F.Act.
- (c) the respondent No.2 to hold and conduct the elections of the Board of Trustees immediately and reconstitute the Board as interim relief pending final disposal of this petition.

2. On 1-8-94 after issuing notice, Rule was issued in this case. The affidavit-in-reply has been filed on behalf of respondent Nos.1 and 2 and it has been stated by the respondent No.1 in the affidavit-in-reply that M/s. Anil Starch Products ltd. is an exempted establishment under S.17 of the Employees' Provident Funds And Miscellaneous Provisions Act,1952. The Provident Fund affairs of the establishment are handled by the Trustees of the Board. The establishment has last conducted election of the Board on 10-8-88 and as per Rules elections are to be held after every five years. The company-respondent No.2 could not hold elections on account of some labour problem although the election had become due in August, 1993. It is the case of respondent No.1 that time and again the establishment was called upon to hold elections and by letter dated 25-3-94 it was also informed that the elections may be held by obtaining the assistance of police, if necessary. The respondent No.1 has stated that no relief could be granted against the respondent No.1.

3. Mr.Patel appearing for the respondent No.2 has submitted that it is practically not possible to hold the elections on account of the labour problem and the unrest and the petitioner has rushed to this Court without approaching the Regional Provident Fund Commissioner.Mr. Shahani submits that respondent No.1 had been approached through document Annexure "A" dated 6-12-93. That may be so, but the fact remains that under the Act,there is no obligation on the part of the Regional Provident Fund Commissioner to hold the elections. It is for the Board of Trustees to hold the elections and so far as the Regional Provident Fund Commissioner is concerned, the power rests with him to pass appropriate orders recalling the exemption under S.17(4) in case any establishment contravenes the provisions of the Act. Mr.Patel appearing for the respondent No.2 has submitted that even as on the date, the unrest amongst the labourers

continues and it is not possible for him to hold the elections,lest a chaotic situation is likely to be created in the establishment and no mandamus can be issued by this court directing the respondent No.2 to hold the elections of the Board of Trustees.

4. Having heard both the sides, it is clear that in case an exempted establishment acts in violation of the provisions of the Act and conditions of exemption under S.17, it is always open for the Regional Provident Fund Commissioner to pass appropriate orders on the question whether the exemption should be allowed to continue or it should be withdrawn or to prosecute the respondent No.2 in accordance with law for breach of any of the provisions of the Act,if any. In fact, Mr.Patel has stated that the respondent No.2 itself is considering the question of surrendering the exemption.

5. Be that as it may, none of the reliefs, as prayed for by the petitioner in this petition, can be granted by this Court. It is for the respondent No.1 to take any appropriate action in accordance with law.It is also open for the petitioner to approach the respondent No.1 seeking cancellation of the exemption of the establishment of respondent No.2 or to seek prosecution of respondent No.2, if permissible under law. In case any such representation is made by the petitioner before respondent No.1, the respondent No.1 may pass appropriate orders within a period of 3 months from the date that representation is made, after hearing all concerned. Whereas none of the reliefs can be granted to the petitioner in this Special Civil Application. At this stage of the dictation of the order, the learned counsel for the petitioner seeks to withdraw this Special Civil Application and the Special Civil Application is accordingly dismissed as withdrawn. Rule is hereby discharged with no order as to costs.

It will be open for the petitioner to withdraw the amount of Rs.1000/ as the cost,which was deposited in the Court in terms of the ordr dated 1-8-94 passed by this court while granting time to the respondent No.2 for filing reply.